

**REMARKS**

***Claim Rejections – 35 USC § 103***

The Examiner rejected Claims 1-5, 9-21 under 35 USC 103(a) as being unpatentable over the allegedly admitted prior art (fig. 1 as described in the background of the present invention) in view of Paatela (US2006/0209840A1). Applicants respectfully traverse this rejection for at least the reasons stated below.

As stated in MPEP § 2143.01, to establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974).

As set forth above previously and incorporated herein, Paatela fails to disclose (bolded for emphasis):

sequentially processing the PDU at each of a plurality of hierarchical levels, said processing at each of the plurality of hierarchical levels consisting of: characterizing the flow at ***the current hierarchical level***;

gating the PDU wherein the PDU is either passed or dropped based upon the character of the flow at the current level, wherein the gating includes applying a color to the PDUs of the flows based upon traffic parameters ***specific to those flows at a second hierarchical level***.

The Examiner states that Paatela describes a single or two rate tri-color marker which provides a mechanism for marking packets when they exceed a contracted bandwidth. However, the Examiner has not shown that Paatela describes applying a color to the PDUs of the flows based upon traffic parameters ***specific to those flows at a second hierarchical level***.

Paatela does not teach or suggest characterizing a flow at a current level and coloring the flow at a second level. As such, Applicant believes that the currently amended independent claims, as well as the claims that depend from them, are in condition for allowance and respectfully request they be passed to allowance.

Specifically, the portion of Patella as quoted by the Examiner states “[0094] The macro sequencer 780 also works in connection with the policer 711. Generally, network policing allows

subscriber bandwidth to be controlled in terms of the contracted service levels that were provisioned and is typically used at the ingress of the network. One manner for policing, for example in an MPLS network, is Single Rate Tri-Color Marker (srTCM) or (trTCM) Two Rate Tri-Color Marker. Tri-Color marking provides a mechanism for marking packets when they exceed the contracted bandwidth. [0095] The srTCM meters a traffic stream and marks its packets according to three traffic parameters, Committed Information Rate (CIR), Committed Burst Size (CBS), and Excess Burst Size (EBS), to be either green, yellow, or red. A packet is marked green if it doesn't exceed the CBS, yellow if it does exceed the CBS, but not the EBS, and red otherwise. The trTCM meters an IP packet stream and marks its packets based on two rates, Peak Information Rate (PIR) and Committed Information Rate (CIR), and their associated burst sizes to be either green, yellow, or red. A packet is marked red if it exceeds the PIR. Otherwise it is marked either yellow or green depending on whether it exceeds or doesn't exceed the CIR. These techniques help manage network congestion at the output link, allowing the right packets to be discarded while facilitating fairness of resource usage. [0096] The policer 711 performs packet conformance functions, and deals with such coloration issues. The macro sequencer 780 is coupled to receive information such as the coloration, and an indication of whether or not to drop the packet, from the policer 711. The macro sequencer can manipulate the appropriate bits in the appropriate header field in the memory 716 in response to coloration issues. For example, if the policer 711 determines that the current packet has exceeded its bandwidth, the policer 711 will provide a particular color to the macro sequencer 780. In response, the macro sequencer 780 modifies the bits in the appropriate network layer header to reflect the particular color, such as by modifying the type of service (TOS) field in an IPv4 header." As is clear from the above-cited passage, the Examiner states that Paatela describes a single or two rate tri-color marker which provides a mechanism for marking packets when they exceed a contracted bandwidth. However, the Examiner has not shown that Paatela describes applying a color to the PDUs of the flows based upon traffic parameters *specific to those flows at a second hierarchical level*.

Paatela does not teach or suggest characterizing a flow at a current level and coloring the flow at a second level. As such, Applicant believes that the currently amended independent

claims, as well as the claims that depend from them, are in condition for allowance and respectfully request they be passed to allowance. Claims 1, 11, 12, 13 and 21 are patentably distinct under 37 CFR 1.111(b) and are allowable. Therefore all claims depending therefrom are also allowable.

However, purely in the interest of clarifying Applicant's invention and expediting the prosecution of the instant invention, Applicant has amended claims 1 and 12 to substantially include the following limitations:

receiving a protocol data unit (PDU) associated with one of a plurality of flows;  
sequentially processing the PDU at each of a plurality of hierarchical levels, said processing at each of the plurality of hierarchical levels consisting of: characterizing the flow at ~~the~~ the current hierarchical level;

gating the PDU wherein the PDU is either passed or dropped based upon the character of the flow at the current level, wherein the gating includes applying a color to the PDUs of the flows based upon traffic parameters specific to those flows at a second hierarchical level characterizing the flow at the current hierarchical level; ~~and~~

additionally gating the PDU based upon the character of the flow at the second hierarchical level, wherein the additional gating includes employing a plurality of measure/mark modules to measure how much data is flowing per given time period; and

outputting the gated PDU and the additionally gated PDU in a single stream via a hierarchical multiplexor if the PDU is passed at each of the plurality of hierarchical levels.

Support for such limitations can be found at least in paragraphs [0018] through [0035] of the instant invention. Patella does not teach or suggest such limitations. As such, Applicant believes that claims 1, 11, 12, 13 and 21 as well as the claims that depend from claims 1, 11, 12, 13 and 21 are in condition for allowance and respectfully request they be passed to allowance. In light of the arguments set forth above, Applicant traverses each and every claim, depending from claims 1, 11, 12, 13 and 21. As such, Applicant believes that claims 1-22 are in condition for allowance.

**CONCLUSION**

For the above reasons, the foregoing amendment and response places the Application in condition for allowance. Therefore, it is respectfully requested that the rejection of the claims be withdrawn and full allowance granted. Should the Examiner have any further comments or suggestions, please contact the undersigned.

	Respectfully submitted,
	RG & ASSOCIATES
Dated: 04/17/2009	<u>/Raffi Gostanian/</u>
	Raffi Gostanian Reg. No. 42,595

RG & Associates  
1103 Twin Creeks, Ste. 120  
Allen, TX 75013  
Phone: (972) 849-1310